

# NO SHELTER FROM THE STORM

THE URGENT NEED TO RECOGNISE  
AND PROTECT CLIMATE REFUGEES



#### COVER IMAGE

PEOPLE RESTING ON THE DANGEROUS JOURNEY FROM CENTRAL AMERICA TO THE US BORDER. THE CLIMATE CRISIS IS AN IMPORTANT DRIVER OF DISPLACEMENT IN THE REGION.

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**The Environmental Justice Foundation Charitable Trust is a UK registered charity that believes we all share a basic human right to a secure natural environment.**

EJF has teams based in Belgium, Germany, Ghana, Indonesia, Japan, Liberia, Sierra Leone, South Korea, Taiwan, Thailand, Senegal and the UK. Our investigators, researchers, filmmakers and campaigners work with grassroots partners and environmental defenders across the globe.

Our work to secure environmental justice aims to protect our global climate, oceans, forests and wildlife and defend basic human rights.

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*All views expressed are those of EJF alone, and interviewees do not necessarily share the expressed views and interpretations.*

Environmental Justice Foundation (EJF)  
Unit 417, Exmouth House,  
3/11 Pine Street, London, EC1R 0JH, UK

Registered charity no. 1088128



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**CHILDREN PLAY IN ZAATARI  
REFUGEE CAMP IN JORDAN, ONE  
OF THE LARGEST IN THE WORLD.**

# EXECUTIVE SUMMARY

- The climate crisis is exacerbating existing vulnerabilities and global inequalities: as the planet continues to heat, more people will be forced to flee their homes.

The displacement impacts of the climate crisis can already be seen today. Since 2008, weather-related hazards – which are increasing in frequency and severity as a result of the climate crisis – have displaced over 21 million people each year on average, equivalent to 41 people every minute.<sup>1</sup> This figure does not include those forced to leave home due to slow-onset climate impacts, such as desertification and sea level rise.<sup>2</sup> Most of the world's climate refugees come from vulnerable communities in lower-income countries, where environmental degradation and climate change intersects with and exacerbates other stressors such as poverty, oppression, and conflict.<sup>3</sup>

- Climate refugees are already being forced from their homes today, from farmers in Bangladesh losing their livelihoods to communities such as the ones in California and Turkey losing their homes to extreme wildfires. Communities in all countries will be impacted: the climate crisis is a universal challenge, and we all have a common shared interest to act with far greater urgency and ambition now to avert the worst impacts of climate breakdown.
- EJF defines a climate refugee as “Persons or groups of persons who, for reasons of sudden or progressive climate-related change in the environment that adversely affects their lives or living conditions, are obliged to leave their homes either temporarily or permanently, and who move either within their country or abroad.”
- The current international protection regime does not meet the needs of climate refugees. There remains a deficit of adequate legal and policy frameworks governing climate-induced displacement at the

international level. We refer to a ‘protection gap’ to describe the lack of satisfactory measures addressing the various adaptation, disaster risk reduction, humanitarian assistance and legal protection needs of climate refugees. As the climate crisis intensifies, this gap will present a growing humanitarian crisis and risk the erosion of human rights achievements and the failure of the Sustainable Development Goals agenda across the world.

- The Environmental Justice Foundation calls on the international community to urgently work together to protect climate refugees by mitigating global heating through rapid decarbonisation action and developing protections for those already affected by climate change. All climate actions and agreements, including COP 26, must address the issue of climate adaptation and recognise climate-induced displacement as a form of adaptation in need of international recognition, support and action. These actions must include:

The development of a new legal framework for the protection of climate refugees. Such a framework must take place entirely outside of the scope of the 1951 Convention Relating to the Status of Refugees, in order to guard the integrity of existing refugee protection mechanisms.

Full implementation of the Paris Agreement to keep global temperature rise to 1.5°C above pre-industrial levels.

Delivery of and scaling up of international climate finance commitments, to fund mitigation, adaptation, loss and damage, disaster risk reduction and resilience programmes which deliver dignified and durable solutions for those impacted first and worst by the climate crisis.

Investment in new data collection and monitoring systems to better understand, predict and support the needs of climate refugees.

Commitment to inclusive deliberations and negotiations for mitigation and adaptation to the climate crisis.



# INTRODUCTION

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## The fight against climate breakdown is fundamentally an issue of justice.

The climate crisis will affect us all, rich and poor, Global North and Global South. We face a universal threat and share a common interest in scaling up our ambition and action to mitigate climate change and adapt to our heating planet.

However, it is also a disturbing fact that the people and countries that have historically contributed the least to greenhouse gas emissions and benefited the least from carbon-fuelled economic growth, are those suffering first and worst from the impacts of climate change. Already at a 1°C increase of warming, climate change is acting as a threat multiplier, compounding existing economic, political, social and ecological stresses in marginalized communities across the world. The socioeconomic impacts of global heating will be nonlinear and are likely to have knock-on effects as tipping points are reached beyond which physiological, human-made, and ecological systems break down.<sup>4</sup> The climate crisis is not only creating new global inequalities -- it will also exacerbate existing divisions and inequalities, driving a vicious cycle where low-income and marginalized communities will be rendered increasingly vulnerable by climate change.<sup>5</sup> It is therefore critical that human rights and justice be placed at the centre of climate mitigation and adaptation policy. Failure to do so would not only be inequitable and unjust, it would magnify existing challenges and lead to failure across efforts to protect ecosystems and humanity from the destructive impacts of the climate crisis.

Climate refugees are an extreme example of the injustice wrought by global heating, where communities - often those with the least historical responsibility for greenhouse gas emissions - are forced from their homes by the climate crisis.

EJF defines climate refugees as:

**“PERSONS OR GROUPS OF PERSONS WHO, FOR REASONS OF SUDDEN OR PROGRESSIVE CLIMATE-RELATED CHANGE IN THE ENVIRONMENT THAT ADVERSELY AFFECTS THEIR LIVES OR LIVING CONDITIONS, ARE OBLIGED TO LEAVE THEIR HOMES EITHER TEMPORARILY OR PERMANENTLY, AND WHO MOVE EITHER WITHIN THEIR COUNTRY OR ABROAD.”**

Global heating is causing year on year increasing incidents of heat waves, sea level rise, drought, desertification, extreme storms, flooding, coastal erosion, salinification and many other hazards which threaten the lives and livelihoods of communities around the world, and especially on the frontlines of the climate crisis. Migration is one form of adaptation to this devastation wrought by the climate crisis. Although isolating a single push factor for migration can be challenging, there can be no doubt that the climate crisis is rendering life more dangerous and difficult, and threatening the human rights of communities around the world. This report is not an invitation to reopen a debate on terminology for those displaced by climate change: rather, we are seeking to highlight existing protection gaps in our international legal system; and to contribute to urgently needed solutions to meet the needs of communities displaced by the climate crisis. By using the term ‘climate refugee’, EJF incorporates humanitarian protection and the cross-cutting issue of justice.

*Irrespective of debates over terminology, climate refugees are victims of anthropogenic climate change, needing and deserving support and full protection of all enshrined human rights.*

# A CRISIS TODAY: CURRENT FIGURES ON CLIMATE REFUGEES

Since 2008, weather-related hazards – which are increasing in frequency and severity as a result of the climate crisis – have displaced over 21 million people each year on average, equivalent to 41 people every minute.<sup>6</sup>

This figure does not include those forced to leave home due to slow-onset climate impacts, such as desertification and sea level rise.<sup>7</sup> Most of the world's climate refugees come from vulnerable communities in lower-income countries, where environmental degradation and climate change intersects with and exacerbates other stressors such as poverty, oppression, and conflict.<sup>8</sup> It is no coincidence that out of the 20 countries deemed most vulnerable to the climate crisis, 12 are mired in long-term conflicts including Yemen, Afghanistan, the Democratic Republic of Congo and Somalia, all of which have large populations of internally and internationally displaced persons.<sup>9</sup> Several studies have established a causal link between climate change and conflict,<sup>10</sup> and climate change, conflict, and asylum seeking in specific cases.<sup>11</sup>

Displacement can occur internally within states, or externally, across international borders. Migration due to climate and environmental factors is projected to be primarily internal displacement, and when external, will mostly be across low- and middle-income and primarily agrarian economies and countries.<sup>12</sup> The need for protection is clear whether climate refugees are displaced internally or across international borders; however, when

they are displaced across an international border, a particularly acute legal protection gap exists.

Discussions around the nexus between environment and mobility and the status of people displaced have been evolving since at least the 1980s,<sup>13</sup> but the worsening climate crisis has brought increased urgency to defining and protecting the status of a specific class of environmentally displaced people - climate refugees.<sup>14,15</sup> According to the UNFCCC's September 2021 Nationally Determined Contribution (NDC) Synthesis report, our current plans to reduce greenhouse gas emissions still put our planet on a path to around 2.7°C increase this century.<sup>16</sup> One study predicted that 3°C of global heating could translate to 3.5 billion people living outside of the historically habitable temperature niche for the human species;<sup>17</sup> a significant proportion of these people will be forced to flee their homes in order to survive. The World Bank has predicted that by 2050, the climate crisis may cause 216 million people to be internally displaced across the six regions studied alone - Latin America, North Africa, Sub-saharan Africa, Eastern Europe and Central Asia, South Asia, and East Asia and the Pacific.<sup>18</sup>

It is important to caveat all projections of climate refugee populations with the fact that all models thus far produced rely on complex extrapolations based on economic theories: however, it is clear that a significant number of people will need specific protections as a result of displacement due to the climate crisis.

The purpose of modelling displacement figures is not to induce security-motivated panic or appeal to those who fear migration as a threat. By mapping potential flows of climate refugees we are illustrating the scale of human suffering which the climate crisis will trigger, and make an urgent case for protective action - both mitigation and adaptation policy, and specifically including support to the displaced.

**41 PEOPLE EVERY MINUTE ARE  
DISPLACED DUE TO THE CLIMATE CRISIS.**



**21 MILLION PEOPLE  
EACH YEAR ON AVERAGE**

## CASE STUDY

# CENTRAL AMERICAN MIGRATION TO THE USA

Central America, and especially the region known as the Northern Triangle (Guatemala, El Salvador, and Honduras) is one of regions most exposed to global heating impacts such as droughts, storms, heatwaves, and floods.<sup>19</sup>

The high percentage of the population dependent on agriculture makes the region particularly vulnerable to climate change impacts.<sup>20</sup> A 2°C increase in temperature could cause crop yields to decrease by up to 50% in Central America and the Caribbean.<sup>21</sup> The World Bank has estimated that anywhere from 1.4 to 3.9 million people could be displaced by the climate crisis in Central America and Mexico alone by 2050.<sup>22</sup>

Since the 1960s, extreme weather events including longer droughts and more violent storms have been increasing in frequency and intensity, putting the Northern Triangle countries among the top 15 most climate-impacted countries in the world.<sup>23</sup> Vulnerability to climate impacts is exacerbated by the high levels of poverty in the region,<sup>24</sup> combined with shockingly high levels of malnutrition (10%),<sup>25</sup> and some of the highest rates of violence worldwide outside of a warzone. In

the fall of 2020, a record breaking hurricane season,<sup>26</sup> Central America experienced two violent storms - Hurricanes Eta and Iota - within two weeks of each other. Together, the storms killed hundreds, displaced over 100,000 families and affected approximately 8 million people in the region,<sup>27</sup> contributing to annual economic contractions of approximately 8.6% in El Salvador, 8% in Honduras, and 1.5% in Guatemala.<sup>28</sup> The climate crisis may also be contributing to a particularly severe outbreak of coffee rust, which contributed to over \$3 billion in losses and forced almost 2 million farmers off of their land from 2012 to 2017.<sup>29</sup>

As the climate crisis intensifies and devastates agricultural livelihoods, people are forced from home. Most Central American migrants are first displaced internally to cities within their countries,<sup>30</sup> but lives in urban centres are also plagued by hardship, including extreme violence due to gang wars and other criminal activity. This forces many to flee again, this time across international borders towards the USA.

Food insecurity is one of the largest drivers cited by Central American climate refugees.<sup>31</sup> The World Food Programme estimates that approximately 8 million people in the Northern Triangle and Nicaragua are currently facing food insecurity in 2021.<sup>32</sup> A recent study found that in years of drought in Honduras, levels of violence were higher and at the same time there were higher numbers of apprehensions at the US border as people tried to cross.<sup>33</sup> Over 2 million people are estimated to have fled the Northern Triangle region since 2014,<sup>34</sup> including an increasing number



**“IN 2020, HURRICANES  
ETA AND IOTA DISPLACED  
OVER 100,000 FAMILIES  
AND CAUSED SIGNIFICANT  
ECONOMIC CONTRACTIONS  
IN CENTRAL AMERICA.”**

Delmer Membreno / EU Civil  
Protection and Humanitarian Aid



of women and children, some of whom travel as unaccompanied minors. From October 2020 to April 2021, approximately 15% (34,000 out of 226,000) of the Salvadorans, Guatemalans and Hondurans stopped at the US border were unaccompanied minors.<sup>35</sup>

*“It didn’t rain this year. Last year it didn’t rain,” said Jesús Canan, an Indigenous Ch’orti’ Maya who joined a large group of migrants known as a ‘migrant caravan’ to the USA in 2018. “My maize field didn’t produce a thing. With my expenses, everything we invested, we didn’t have any earnings. There was no harvest...It wasn’t the same before. This is forcing us to emigrate... In past years, it rained on time. My plants produced, but there’s no longer any pattern [to the weather].”<sup>36</sup>*

The route from Central America to the USA is fraught with risk: climate refugees not only face a long journey of thousands of kilometres by bus, train, or on foot, but they are often subjected to violent crime including assault, rape, extortion, kidnapping and murder along the way at the hands of criminal gangs and human traffickers. According to a survey carried out by Médecins Sans Frontières, which operates humanitarian assistance programmes in the region, 57.3% of those interviewed had been exposed to some kind of violence along the migration route in Mexico alone.<sup>37</sup>

These displaced people also often face discrimination, exploitation, arrest and even violence at the hands of police and security forces they encounter along the way.<sup>38</sup> Arrival at the US border does not spell safety for climate refugees, as they face high barriers

to achieving legal status and access the protections they deserve. Although the Northern Triangle is characterised by high levels of violence, criminal violence and domestic violence are disputed as a basis for asylum claims in the US, and no pathways exist for claiming asylum based on environmental factors, thus limiting opportunities for gaining refugee status.<sup>39</sup>

Under the Trump administration, new policies were enacted which further limited the rights and protections afforded to those arriving from Central America, including lowering the USA’s refugee admissions ceiling, limiting the grounds on which asylum can be claimed (contrary to UNHCR criteria), setting new requirements on port of entry eligibility, and the ‘Remain in Mexico’ policy which resulted in the creation of refugee camps at the US-Mexico border.<sup>40</sup> Although President Biden ended the ‘Remain in Mexico’ policy in his first weeks in office, in August 2021, the US Supreme Court ruled that he was legally required to reinstate it.<sup>41</sup> However, the legal wrangling back and forth does not fully address the climate drivers of displacement in Central America. Even the most generous application of US and international refugee law does not cover displacement due to climate drivers and so will not fill the protection gap needed to address the humanitarian crisis in Central America.



S. Billy / EU Civil Protection and Humanitarian Aid



# FALLING THROUGH THE CRACKS: LEGAL GAP ANALYSIS

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Ioane Teitiota and his wife fled their home in Kiribati in 2007, citing overcrowding, failing crops, contaminated water supplies, social tensions and violence as among the reasons they needed to leave their island home, which at its highest point is less than 2 metres above sea level. They arrived in New Zealand, and became the first people in the world to claim refugee status based on the climate crisis. In 2015, New Zealand's Supreme Court denied Teitiota's claim and ordered his deportation, arguing that climate was not covered by existing refugee law.<sup>42</sup> The UN Human Rights Committee ruled against Teitiota in October 2019 based on his failure to prove that his deportation to Kiribati consisted of an immediate threat to his right to life. However, the Human Rights Committee also indicated that it may be unlawful for governments to return people to countries where their lives would be put at risk by the climate crisis.<sup>43</sup> The Committee found that "without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending states. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized."<sup>44</sup> Yet it is not clear how immediate the danger should have to be for someone to be able to claim asylum because of the climate crisis, or how an individual might be required to prove their level of vulnerability.

While the Teitiota case provides a glimmer of hope as to the willingness of international bodies to legally recognise the threat of the climate crisis, it also highlights how our existing legal frameworks are currently failing to protect those most at risk from the climate emergency.

Since the Teitiota ruling, other cases have been adjudicated in courts, furthering the protection debate at the intersection of climate and displacement. For example, a Bangladeshi man became the first person granted immigration status in France based on environmental criteria, in this case the dangerous levels of air pollution in his country of origin,<sup>45</sup> sparking hope that this case may represent a step in the right direction for the protection of climate refugees.

This chapter is intended as an overview of the legal and policy frameworks governing climate-induced displacement at the international level. It specifically refers to international and regional legal and policy frameworks governing climate-induced displacement, and as such does not address national frameworks which may be considered relevant, such as Temporary Protected Status in the USA or the Swedish Aliens Act of 2005. We find that there remains a deficit of adequate legal and policy frameworks governing climate-induced displacement at the international level: existing frameworks do not meet the protection needs of climate refugees. We refer to a 'protection gap' to describe the lack of satisfactory measures addressing the various adaptation, disaster risk reduction, humanitarian assistance and legal protection needs of climate refugees.

**THE TEITIOTA VS. NEW ZEALAND WAS ONE OF THE FIRST LEGAL CASES FOR CLIMATE REFUGEE PROTECTION. THE RULING HIGHLIGHTS HOW OUR EXISTING FRAMEWORKS ARE FAILING TO PROTECT THOSE MOST AT RISK.**

## CURRENT REFUGEE LAW

Existing refugee law is not a suitable avenue through which to pursue responses to climate-induced displacement. It is vital that existing instruments are not amended or opened up to renegotiation.

### KEY FRAMEWORKS GOVERNING PERSONS SEEKING ASYLUM:

- 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES
- 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES
- 1969 ORGANISATION OF AFRICAN UNITY (OAU) CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA
- 1984 CARTAGENA DECLARATION ON REFUGEES
- 2018 GLOBAL COMPACT ON REFUGEES

The only way international refugee law would apply to climate refugees currently is if they either (1) cross a border in the context of a conflict linked to environmental degradation or (2) cross a border as a result of the obstruction or withholding of aid and assistance following a climate-related natural disaster. These instances retain the key characteristics of refugeehood – in that they would involve a degree of persecution related to the criteria in the 1951 Convention as well as movement across a political boundary.<sup>46</sup> Legal causation in this context is difficult to establish. For instance, to qualify as a refugee under the 1951 Convention it is necessary to have a “well-founded fear of persecution” but it is unclear who might be considered an agent of persecution in situations of climate-induced displacement. It is similarly uncertain whether the indiscriminate nature of climate-related causes of displacement could be reconciled with a legal definition of persecution,<sup>47</sup> although some scholars

have proposed a new, deterritorialized understanding of ‘persecution’ under the climate crisis to account for the nature of the climate crisis and climate-induced displacement, and serve as the normative basis for a new climate refugee protective framework.<sup>48</sup> Similar observations about the legal definition of ‘persecution’ under existing refugee law can be made regarding the 1984 Cartagena Declaration and 1969 Organisation of African Unity Convention. Whilst they provide expanded definitions which may nominally include those displaced by natural disasters, establishing legal causation between a particular natural disaster and human activity will prove difficult.<sup>49</sup>

In 2018, new, non-binding international agreements on displacement and migration were adopted by the UN: the Global Compact on Migration and the Global Compact on Refugees. Because those fleeing their countries as a result of the climate crisis are not defined as refugees, they are largely absent from the Global Compact on Refugees (GCR). While there is acknowledgement of how climate and environmental factors interact with refugee flows, there is no recognition that climate displacement may qualify for refugee status under the 1951 Refugee Convention or wider refugee notions under regional law. However, the need for clearer definitions and status determination was also raised in the GCR, along with a statement that, where appropriate, UNHCR will advise on measures to protect those displaced by climate change.

Existing mechanisms clearly do not meet the unique protection needs of those displaced by the climate crisis and new durable solutions are urgently needed. Amending existing international refugee law by widening its interpretation potentially risks opening it up to renegotiation and thereby undermining existing protection mechanisms. Therefore, it is critical that a new legal framework for the protection of climate refugees be created entirely outside of the scope of the 1951 Convention.



## CASE STUDY

# SOMALI PROTRACTED DISPLACEMENT IN KENYA

Somalia is marked by climate breakdown and a long-lasting conflict which is exacerbated by poverty and a lack of governance, leaving many people internally displaced or forcing them to flee across national borders.<sup>50,51</sup>

Almost 3 million Somalis are internally displaced,<sup>52</sup> and at least 642,000 have sought refuge in neighbouring countries.<sup>53</sup> The climate crisis has magnified vulnerability in Somalia and contributed to displacement and food and water insecurity.<sup>54,55</sup> Since 1990, Somalia has experienced more than 30 climate-related hazards, representing an increase of three times the number which occurred between 1970 and 1990.<sup>56</sup> These threats, including frequent extreme droughts and floods as well as severe locust outbreaks, have catastrophically impacted crop production and livestock productivity.<sup>57</sup> In 2020 alone, 919,000 people were displaced by flooding and 144,000 hectares of agricultural land were destroyed.<sup>58</sup> As the planet continues to heat, climatic extremes will become more frequent, threatening livelihoods and human rights in Somalia and exacerbating patterns of conflict and displacement.<sup>59</sup>

*Ahmed Mohamud, a Somali herder, has lost 50 of his 70 camels. "There's no food. The ground is dry," he said. "This country is known for its refugees. If you lose your animals, you sign up as a refugee, that's what we say. So, there are many people who lost their animals and signed up as refugees."*<sup>60</sup>

Many displaced Somalis have crossed international borders to seek refuge in neighbouring states. At the end of June 2021, UNHCR reported more than 520,000 refugees in Kenya, including more than 270,000 Somalis who arrived in several waves over the past three decades.<sup>61</sup> Nearly half of the total refugee population lives in the Dadaab refugee complex in north-eastern Kenya, one of the largest refugee camps in the world.

It was set up in 1992 and was originally designed to accommodate 90,000 refugees.<sup>62</sup> Conditions for refugees living in camps are often difficult, and were further exacerbated by the Covid-19 pandemic: an assessment in the Dadaab refugee complex found that around 64% of the households interviewed had had decreasing food supplies in 2020.<sup>63</sup> Many Somali refugees in Dadaab and elsewhere find themselves in protracted 'temporary' conditions, and have been living in refugee camps for almost 30 years.<sup>64</sup> Many residents were born in the camps and have never been to Somalia.<sup>65</sup> Of all refugees displaced worldwide, an estimated 78% live in similar protracted situations.<sup>66</sup> As the impacts of global heating become increasingly severe and the conditions of life across many parts of the world become more dangerous, more and more communities will be at risk of protracted displacement far from home.

*"Somalia is a perfect case of [the] disastrous consequences of the combination between climate change and conflict. And how climate change and conflict are working together to worsen an already disastrous humanitarian situation," said Abdallah Togola, head of the International Committee of the Red Cross and Red Crescent's economic security program in Somalia.*<sup>60</sup>

The enduring violent conflict in Somalia has allowed the 1951 Refugee Convention to be invoked, even as the climate crisis plays an increasing role in displacing communities, exposing legal protection gaps.<sup>67</sup> Despite recognisable legal development in the region, there has been little progress in finding durable, rights-based solutions and the future of Somali refugees in Kenya remains uncertain. For several years, the Government of Kenya has repeatedly called upon UNHCR to close the refugee camps, and in March 2021 issued a 14-day ultimatum to shut down the camps.<sup>68</sup> However, the high court of Kenya found that the order to close the camp was unconstitutional and violated refugee rights.<sup>69</sup> Eventually, the Government of Kenya and the United Nations High Commissioner for Refugees agreed on a roadmap for closing down Dadaab and other long-term refugee camps instead.<sup>70</sup> The plan includes provisions for voluntary return to the home countries, alternative stay options in Kenya and departures to third countries. Since this announcement was made, registration of new persons has been stopped leading

to an increased number of unregistered asylum seekers in the camps, creating new and additional levels of vulnerability as unregistered refugees may struggle to access basic services.<sup>71</sup> Closure plans remain uncertain and many refugees fear losing access to health care or food. Furthermore, voluntary repatriation remains questionable in the light of unsafe living conditions in the countries of origin as the climate crisis makes life even more dangerous in Somalia and other countries.

The case of protracted displacement of Somalis provides a poignant example of the multitude of risks faced by climate refugees, and how the climate crisis magnifies and intersects with other dangers such as violent conflict. This example also illustrates how the burdens of protecting refugees falls disproportionately on other developing countries, who may not have the resources - or the historical responsibility - for protecting those displaced. Existing refugee law frameworks have failed to provide durable solutions to displaced Somali refugees fleeing a constellation of climate impacts, violence and human rights violations, laying bare a protection gap which requires urgent action.

**“THERE’S NO FOOD, THE GROUND IS DRY. THIS COUNTRY IS KNOWN FOR ITS REFUGEES. IF YOU LOSE YOUR ANIMALS, YOU SIGN UP AS A REFUGEE, THAT’S WHAT WE SAY.”**



## CURRENT DISPLACEMENT FRAMEWORKS

International frameworks governing displacement are ill-equipped to respond to the different types of voluntary and involuntary movement associated with the climate crisis.

### KEY FRAMEWORKS GOVERNING DISPLACEMENT

- 1998 GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT
- 2009 AFRICAN UNION CONVENTION FOR THE PROTECTION AND ASSISTANCE OF INTERNALLY DISPLACED PERSONS IN AFRICA (KAMPALA CONVENTION)
- NANSEN INITIATIVE ON DISASTER-INDUCED CROSS BORDER DISPLACEMENT / PLATFORM ON DISASTER DISPLACEMENT AND THE 2015 AGENDA FOR THE PROTECTION OF CROSS-BORDER DISPLACED PERSONS IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE
- 2018 GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION (GLOBAL COMPACT ON MIGRATION)

There are existing mechanisms governing both internal and external displacement: 1998 UN Guiding Principles and the 2009 Kampala Convention focus on internally displaced persons, and the Nansen Initiative, the Platform on Disaster Displacement, the 2015 Agenda, and the Global Compact on Migration (GCM) look at those displaced across borders.

The 1998 UN Guiding Principles on Internal Displacement, written by independent legal experts and based on existing provisions of international human rights and humanitarian law, state that all internally displaced persons are entitled to enjoy, without discrimination, the same rights and freedoms under international and domestic law as do other persons in their country.<sup>72</sup> The Guiding Principles have a clear relevance to climate-induced displacement. They refer explicitly to flight from ‘natural or human-made disasters’ and cover the before, during and after phases of displacement – meaning that they contain pertinent requirements for states, such as the need to develop adequate early-warning and disaster preparedness systems. However, as they pertain solely to those displaced within national boundaries they exclude any

person displaced by climate change who moves across a border. The Guiding Principles offer a soft law approach which is not legally binding and as such provides no mechanisms for enforcement or accountability. However, they are predominantly based on established international legal norms and, in this sense, it may be possible to invoke the existing instruments to which it refers, such as can be seen in Principle 6, “the right to be protected against being arbitrarily displaced”, which draws creatively from existing binding international law to make explicit the implicit right to not be arbitrarily displaced.<sup>73</sup> However, the Guiding Principles in addition to being non-binding, are not a panacea for meeting the protection needs even of internal climate refugees. The Guiding Principles deliberately exclude those displaced for economic reasons – yet most human mobility related to global heating features a strong economic dimension centred around the loss of livelihoods and reductions in household income.<sup>74,75</sup>

The 2009 Kampala Convention is an African Union treaty that addresses displacement within national borders caused by conflict, natural disasters, and large-scale development programmes in Africa. It has been ratified by 30 of the 55 members of the African Union. The Kampala Convention is in large part based on the 1998 Guiding Principles, especially in its recognition of the right not to be arbitrarily displaced.<sup>76</sup> However, the Kampala Convention goes further and specifically lays out the obligations of states to “protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.”<sup>77</sup> In light of the Kampala Convention’s emphasis on prevention of arbitrary displacement, this means that states must engage in due processes such as early warning systems, local engagement in resettlement planning, the provision of humanitarian assistance, and remediation for internally displaced climate refugees.<sup>78</sup> Several ratifying states have developed national legal frameworks based on the treaty.<sup>79</sup> This recognition of climate-induced displacement and the progress towards full ratification represent important modernising steps in the protection of climate displaced persons, however in the decade since its adoption, the impact of the Kampala Convention has been limited by inconsistent implementation and enforcement,<sup>80</sup> as well as the limitation in scope to internal displacement in Africa.

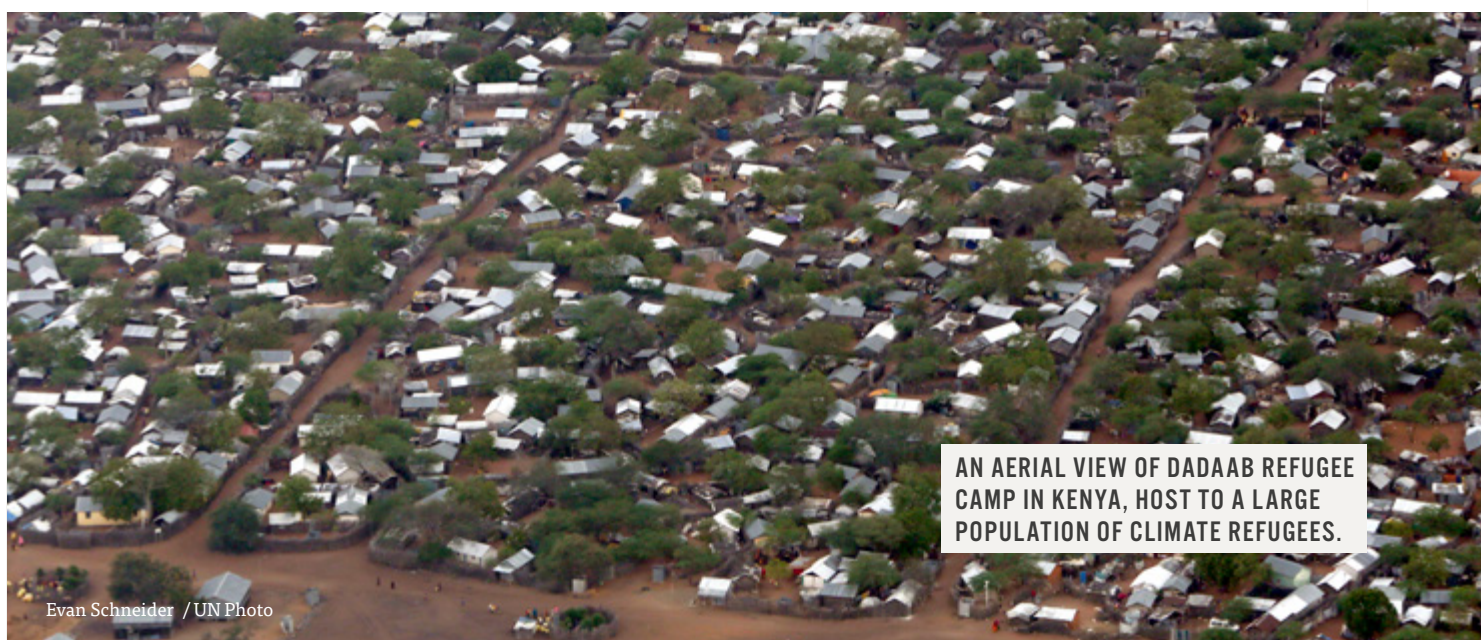
The Nansen Initiative and its successor, the Platform on Disaster Displacement, aim to provide a policy framework to support the implementation of the 2015 Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, which has been endorsed by 109 states. The Protection Agenda seeks to help states to better prevent and prepare for disaster-induced displacement, and to improve the standard of responses in situations of large-scale displacement. Rather than calling for a new binding international framework on cross-border disaster or climate-related displacement, the Protection Agenda focuses on the dissemination and integration of best practices into states and (sub-) regional level policies.<sup>81</sup> Notably, the Protection Agenda developed by the Nansen Initiative sets out suggested state practice in identifying and admitting cross-border disaster-displaced persons and the status of such persons once admitted.<sup>82</sup> However, all of these practices remain non-binding, and the tentative response from national governments to date shows that a stronger, binding legal framework is needed.

Another key gap in existing displacement frameworks is the question of slow versus sudden onset climate impacts. Although the Nansen Initiative and the 2009 Kampala Convention explicitly reference climate change, it is unclear whether the apparent

focus of these instruments on disasters provides sufficient scope to adequately protect those displaced by slow-onset environmental processes related to global heating, such as saline intrusion linked to sea-level rise (as in the *Teitiota v. New Zealand* case) or desertification linked to rainfall variability.

In 2018, new, non-binding international agreements on displacement and migration were adopted by the UN: the Global Compact on Migration and the Global Compact on Refugees. The Global Compact on Migration (GCM) includes recognition of climate as a driver of migration, along with acknowledgement of the importance of climate mitigation. However, from the outset, the UN made it clear that UN members were not ready to give specific legal international protection to climate-induced migrants. While the GCM makes a number of ambitious high level commitments, such as arguably extending the scope of the principle of non-refoulement to climate-displaced persons, as a soft law instrument, it fails to put in place any binding obligations to address the climate displacement crisis.

There remain critical holes in existing displacement frameworks, including issues of enforceability and accountability, as well as key questions of scope and definition of displacement drivers, which leave climate refugees unprotected. A new framework is required to fill these gaps.



AN AERIAL VIEW OF DADAAB REFUGEE CAMP IN KENYA, HOST TO A LARGE POPULATION OF CLIMATE REFUGEES.

Evan Schneider / UN Photo

## CASE STUDY

# THE CLIMATE VULNERABILITY OF INDIA'S RURAL TO URBAN MIGRANTS

India is highly vulnerable to the impacts of global heating in part because of its large population and growing economy, both of which depend on a limited natural resource base.

The majority of India's population is directly dependent on biodiversity- or climate- sensitive sectors for their livelihoods.<sup>83</sup> Many of those who depend on agriculture are poor: 85% of Indian farmers farm less than 5 acres of land,<sup>84</sup> and even though agriculture only accounts for approximately 15% of India's economic output, almost 75% of Indian families are dependent on rural incomes to survive.<sup>85</sup> Over half of Indian farmland relies on rainfed irrigation, rendering it highly vulnerable to climatic variation.<sup>86</sup> India is already experiencing a variety of climate impacts including rises in average temperatures, increased extreme weather events such as droughts, floods and cyclones, and increased monsoon variation.<sup>87</sup> Studies have shown that Indian agricultural productivity is decreasing as annual average temperatures rise, threatening the food security of the rural farming population.<sup>88</sup> These stressors are already being felt: in India, where one in five

global suicides occur, farmers suffer a uniquely high suicide rate, and one study attributed almost 60,000 suicides to rising temperatures from 1967 to 2013.<sup>89</sup>

As significant heating is expected in the medium term, the Government of India predicts certain crop yields to decrease between 4.5 to 9% by 2040.<sup>90</sup> As the climate crisis continues to cause agricultural failures, more of India's rural poor will see their livelihoods threatened, forcing them to leave home in order to survive.

*"My land doesn't yield as much rice crop anymore. I can't sustain my family on just my agricultural income," said Rajesh Yadav, a 35-year-old domestic worker in New Delhi.*<sup>91</sup>

The Economic Survey conducted in 2017 estimated that an average of 5–6 million Indians migrated annually between 2001 and 2011.<sup>92</sup> The 2011 national census indicated that almost 46% of India's urban population are migrants.<sup>93</sup> There is a prevalence of circular and seasonal migration patterns in India, as mostly men move cyclically seeking work in agriculture: approximately 14 million people every year move on a temporary or seasonal basis.<sup>94</sup> Although rural to rural migration makes up a larger proportion of annual mobility patterns, it is more likely to be seasonal, whereas rural to urban migration is mostly on a permanent basis.<sup>95</sup>

Studies indicate that the motivation for migration is mainly to seek out improved livelihood opportunities, especially for rural displaced people.<sup>96</sup>



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Climate breakdown - by rendering agricultural livelihoods more difficult - is a significant push factor for those who leave home in search of a better life. India's National Sample Survey data has shown that climate factors, both temperature and precipitation, are key drivers for migration in India, by threatening lives and livelihoods in their homes and forcing people to move in search of survival.<sup>97,98</sup>

*"People in the rural areas depend on rain-fed areas for harvesting. The failures of rain can result in crackdown in terms of agriculture, which again contributes to the rural-urban migration." said Vanessa Peter, the founder of Information and Resource Centre for the Deprived Urban Communities (IRCDUC).*

Climate refugees in India's cities often face further challenges and struggle to escape the cycle of poverty. Many are forced into high density informal settlements, or slums, which lack access to basic services such as sanitation and education, or join the ranks of the urban homeless. Socioeconomic deprivation amongst India's urban poor and displaced populations is another major contributor to its climate vulnerability.<sup>99</sup> These communities are most at risk not only from disease and food insecurity, but also from climatic events like cyclones, flooding, and drought. For example, in the summer of 2019, a severe drought hit the southeastern city of Chennai, the sixth largest city of India, resulting in the drying up of four major reservoirs supplying the city.

While some local hotel owners paid for water tankers, around 820,000 people living in Chennai's slums did not have such a choice.<sup>100</sup>

Although rural to urban climate refugees in India do not face immigration law barriers as they usually do not cross international borders, policies do not sufficiently meet their protection needs or fulfill their human rights. Forced to leave home due in part to a changing climate for which they bear little responsibility, these climate refugees are not met with the necessary legal protections, adequate support for dignified employment, access to critical health, education or sanitation infrastructure, or protection from further climatic impacts, creating cycles of more and more severe human rights violations.



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**A CHILD PLAYS IN A LANDFILL IN MUMBAI, INDIA. MANY CLIMATE-DISPLACED PEOPLE ARE FORCED TO LIVE IN UNSAFE AND UNHEALTHY CONDITIONS.**

## STATELESSNESS

Persons rendered stateless by extreme global heating impacts constitute one of the clearest examples of a legal and policy void across international frameworks.

### KEY FRAMEWORKS GOVERNING STATELESSNESS

- 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS
- 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS

In some specific cases – such as settlement abandonment involving cross-border movements out of small island states severely impacted by global heating - populations may be rendered de facto stateless. This is premised on the idea that the climate crisis poses an existential threat to such states and may precipitate their collapse even before inundation under rising sea levels. Despite this, the international legal regime governing statelessness does not nominally apply to such situations, given that the 1954 and 1961 Conventions are “premised on the denial of nationality through the operation of the law of a particular state”.<sup>101</sup>

The issue of ‘climate-induced statelessness’ is fundamentally linked to unresolved questions of what constitutes a state and when a state can be said to have ceased to exist.<sup>102</sup> According to UNHCR, statehood can be said to depend on the willingness of the international community, or individual nations within it, to continue to recognise a state as existing.<sup>103</sup> UNHCR envisages three potential ways to maintain citizenship in the context of climate-induced state collapse or disappearance: (1) a donation of territory and transfer of sovereignty; (2) formal union with another state; and (3) a government-in-exile. The third outcome however, could potentially lead to a situation of de facto statelessness – given that the powers and functions of the exiled government would be constrained and subject to the hospitality and good grace of the host state.<sup>104,105</sup> Furthermore, the effectiveness of provisions in the 1961 Convention for the reduction of statelessness are diminished by the relatively low number of states which have acceded to it.

The international legal regime governing statelessness also fails to address a core protection need for persons displaced across borders by global heating in that it does not mandate any right to admission or residence in a foreign territory.<sup>106</sup>

The climate crisis will present a very real threat to the liveability and continued existence of some states, including well-known cases such as Ioane Teitiota’s origin state of Kiribati. The international legal regime on statelessness as it stands fails to protect climate refugees fleeing homes in nations that may soon disappear due to global heating - a new solution is urgently needed.

## ENVIRONMENTAL AND CLIMATE CHANGE LAW

Without clarification on the definition of climate-induced displacement and a stipulation of concrete measures to prevent, prepare for and respond to situations of displacement, the current legal and policy framework governing environmental and climate change remains too vague to meet the protection needs of climate refugees.

### KEY FRAMEWORKS GOVERNING ENVIRONMENTAL AND CLIMATE CHANGE

- UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)
- 1996 UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION IN THOSE COUNTRIES EXPERIENCING SERIOUS DROUGHT AND/OR DESERTIFICATION, PARTICULARLY IN AFRICA (UNCCD)
- AGENDA 21 OF THE 1992 UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT
- 2015 PARIS AGREEMENT ON CLIMATE CHANGE

Climate-induced displacement has been explicitly recognised in the UNFCCC treaty framework. Section 14(f) of the 2010 Cancun Adaptation Framework invited parties to undertake “measures to enhance understanding, coordination and cooperation with

regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels.”<sup>107</sup> Later, at the eighteenth session of the Conference of Parties (COP 18) in 2012, Paragraph 7(a)(vi) of Draft Decision 3/CP.18 acknowledged the need to study how climate change affects patterns of migration, displacement and human mobility in more detail.<sup>108</sup> During COP 19, this was confirmed in the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts which is mandated to mobilise and secure funds, technology and capacity building activities for countries vulnerable to global heating. It is therefore possible that in the future countries affected by losses and damages associated with climate change impacts may have access to funding for programmes addressing climate-induced displacement; however, a transparent, reliable system does not currently exist.

Another environmental legal framework, the UNCCD addresses forced migration associated with slow-onset processes of desertification. Paragraph 1(e) of Article 17 explicitly calls for research which addresses the relationship between desertification, drought, poverty and migration.<sup>109</sup> Meanwhile, Article 11 mandates the development of sub-regional actions programmes which include “early warning systems and joint planning for mitigating the effects of drought, including measures to address problems resulting from environmentally induced migrations”. Articles 12.46 and 12.47(c) of Agenda 21 of the 1992 United Nations Conference on Environment and Development make identical recommendations in the context of ‘environmental refugees’ and desertification.<sup>110</sup>

The preamble of the 2015 Paris Agreement, which creates a legally binding obligation for states to limit global warming to well below 2°C, states that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human

rights, the right to health, the rights of indigenous peoples, local communities, **migrants**, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity”<sup>111</sup> (own emphasis). Paragraph 49 of Decision 1/CP.21 of the Paris Agreement also **requested** - with vague, non-binding language - that the Executive Committee of the Warsaw International Mechanism on Loss and Damage work to create a task force to “develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change”.<sup>112</sup> In 2019, the Task Force on Displacement had its first meeting and has agreed on a terms of reference to act in an advisory capacity to the Executive Committee of the Warsaw International Mechanism on Loss and Damage on improving understanding of, risk analyses and data collection on climate-induced mobility. It will also work to integrate approaches to avert, minimize and address displacement into national planning frameworks including national adaptation plans; and advise states on formulating relevant laws, policies and strategies.<sup>113</sup> Under this mandate, the Task Force on Displacement has the potential to drive forward needed protections for climate refugees, but only if its members make it so.<sup>114</sup>

As a whole, the international framework governing environmental change has made some progress on the issue of climate-induced displacement. Although some researchers have proposed that the UNFCCC treaty potentially offers a strong institutional framework through which to prevent or address climate-induced displacement from a climate change adaptation lens,<sup>115</sup> the current frameworks as they stand remain too vague and are not fully operationalised. A legal definition of climate-induced displacement must be developed in order to fully meet the protection needs of climate refugees.

## CASE STUDY

# WILDFIRE DISPLACEMENT FROM THE 2020 CALIFORNIA FIRE SEASON

Global heating is causing significant changes to the US climate, with devastating impacts being felt even in the world's wealthiest country.

The case of California's drought is an especially alarming one: the drought from 2010 to 2016 was the worst in US recorded history, and so severe that the federal government created an entirely new classification to describe it.<sup>116</sup> Higher temperatures and drought are greatly increasing wildfires across the western USA.<sup>117</sup> It is estimated that the area burned by wildfires across the region between 1984-2015 was double the area that would have burned without global heating.<sup>118</sup> One contributing factor to the recent conflagrations has been the drought-induced bark beetle infestation that killed almost 150 million trees in California from 2012-2018.<sup>119</sup> Population outbreaks of these insects have also been linked to a changing climate.<sup>120</sup> As global temperatures continue to rise in the coming decades, wildfires will become more frequent and more severe in the western USA, which will have dire consequences for human health, property and livelihoods and displace some of America's first climate refugees.

In 2020, 600,000 Californians, and more than a million across the country, were displaced temporarily or permanently by wildfires, representing more than double the number displaced in 2019.<sup>121</sup> Fires destroyed entire neighborhoods and towns such as the Northern California towns of Last Chance and Bonny Doon. Recovery and resettlement has been painfully slow for many who lost their homes, especially for lower-income families who lack insurance or savings to help rebuild. Wildfires disproportionately affect lower-income and communities of colour: a study found that when comparing areas with similar fire hazards, poorer socioeconomic conditions correlated with increased wildfire vulnerability, as these communities do not have access to the resources necessary to pay for insurance, rebuilding, or regular investments into fire safety.<sup>122</sup>

Furthermore, bureaucratic hurdles abound in communities where the lack of affordable housing is already a crisis. In Santa Cruz County, where more

than 900 homes were lost, only 24 new building permits were approved in the year following the 2020 CZU fires.<sup>123</sup> Many residents who lost their homes are still stuck in temporary housing, some without running water or electricity, waiting to rebuild, while others have given up and left. Rebuilding after a wildfire can accelerate gentrification trends, as single owner homes are prioritised over mobile home parks, rental units, and affordable housing.<sup>124</sup> After the initial wave of emigration following a disaster, a second wave often follows later as the after effects of the fire play out and housing and job availability are reduced, or as residents are faced with continued trauma and mental health issues.<sup>125</sup>

Wildfire displacements are not just limited to California. Further north in September 2020, the Almeda fire raged across southwestern Oregon. By the time the Almeda fire was going, the states of Oregon and California were already stretched to their limits in a record-breaking fire season, and were running out of resources to fight the fires.<sup>126</sup> When the flames died down, the Almeda fire had destroyed two towns, burning 2,700 houses to the ground and displacing 3,000 people.<sup>127</sup> Many of these displaced people a year later are still waiting in crowded hotels to be resettled.<sup>128</sup>

*"Trauma comes in two ways," said Laura Cootsona, executive director at Jesus Center in California which has helped to shelter those displaced by wildfires. "You have the big 'T' trauma if you escaped from a fire, but you also have the little 't' traumas that just go over and over and over."<sup>129</sup>*

In 2021, tens of thousands people have once more had to flee in another fire season.<sup>130</sup> At the time of writing, the Dixie Fire alone had burned more than 500,000 acres, destroying over 1,100 structures and forcing around 33,000 people to flee.<sup>131</sup> Studies have predicted that as many as 13 million Americans could become climate refugees by 2100.<sup>132</sup> While many in the US have resources that leave them at substantially less risk of the impacts of the climate crisis than those in poorer nations, the example of climate refugees in the USA shows the universal threat of the climate crisis: even in the wealthiest economies, there are vulnerable communities at risk of displacement. Although the legal barriers and protection gaps faced by climate refugees in California or Oregon are not identical to those of climate refugees whose island states are sinking beneath rising sea levels, they are also threatened by the loss of their same human rights - the rights to life, to dignity, to health, and to residence. Greater protections for climate refugees everywhere are desperately needed.

## CASE STUDY

## THE CLIMATE CRISIS IN EUROPE

In July 2021, we saw floods rip through towns in Germany, Belgium, the Netherlands, and Luxembourg killing more than 200 people and damaging nearly 72,000 buildings, displacing thousands of inhabitants as entire towns were washed away.<sup>133</sup>

Many fled their homes, while others remained trapped for days amidst the rising floodwaters waiting for rescue evacuations. The German federal and state

governments have pledged €30 billion towards a reconstruction fund, but warned that rebuilding could take years given the scale of the destruction,<sup>134</sup> leaving entire displaced communities in limbo. While communities displaced by the floods in Europe cannot be compared to the plight of climate refugees in less wealthy parts of the world, they serve as proof that the climate crisis is a universal threat.

These floods signal the arrival of climate disasters in Europe, and represent a glimpse of the future to come without bold mitigation and adaptation action now. Investment in climate action is a cost saving opportunity in Europe and worldwide: without ambition now, countless lives will be lost, communities displaced, and economies disrupted by climate chaos.

**THESE FLOODS SIGNAL THE ARRIVAL OF CLIMATE DISASTERS IN EUROPE, AND REPRESENT A GLIMPSE OF THE FUTURE TO COME WITHOUT BOLD MITIGATION AND ADAPTATION ACTION NOW.**



Martin Seifert / Commons

## INTERNATIONAL HUMAN RIGHTS STANDARDS

Current international human rights standards as they stand, while they provide legally binding obligations to respect the human rights of those displaced by the climate crisis, are not sufficient to meet the protection needs of climate refugees. Existing human rights frameworks do not explicitly govern the issue of climate displacement, and are faced with the same persistent unresolved questions of defining climate-induced displacement and unclear standards of protection and harm and risk reduction. The case of *Teitiota v. New Zealand* is a powerful testament to the need for new and specific legal frameworks to apply human rights protections and guarantees to climate refugees.

### KEY FRAMEWORKS GOVERNING HUMAN RIGHTS

- INTERNATIONAL BILL OF HUMAN RIGHTS
  - 1948 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)
  - 1966 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)
  - 1966 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
- 1990 INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES
- UNITED NATIONS HUMAN RIGHTS COUNCIL RESOLUTIONS 7/23, 10/4 AND 18/22
- 1950 EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

The International Bill of Human Rights places all states under two categories of obligation, namely: (1) to refrain from courses of conduct that violate or may violate human rights and (2) to take protective measures to prevent other actors and events from infringing upon human rights. In the context of climate-induced displacement however, there are a variety of reasons as to why these obligations, as they relate to states of origin, third states, or both, cannot be straightforwardly determined.<sup>135</sup> For instance, establishing legal causation between one particular environmentally harmful course of conduct and a specific instance of climate-induced displacement which violates one or more human rights is highly problematic.

The right to seek asylum is provided under Article 14 of the UDHR and the principle of ‘non refoulement’ is recognised as customary international law. This principle prohibits the expulsion of individuals to territories where they may be subjected to torture, inhuman or degrading treatment, or where their lives and freedoms might be at risk.<sup>136</sup> Even so, international human rights law does not regulate admission into foreign territory which remains the domain of sovereign state law.<sup>137</sup> This is a core protection gap for those forced to move across borders as a result of climate-induced displacement. Whilst Article 15(1) of the UDHR provides for the right to a nationality – which may be viewed as having relevance to persons rendered stateless by climate change impacts – it does not mandate a correlative duty on states to confer nationality and hence does not offer a durable solution to persons rendered stateless by extreme global heating impacts.<sup>138</sup> In October 2021, the United Nations Human Rights Council passed a resolution recognising the human right to a safe, clean, healthy and sustainable environment, which also acknowledged the human rights impacts of the climate crisis, and states that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy human rights, including the right to life”.<sup>139</sup> The Council also appointed a new UN Special Rapporteur on the promotion and protection of human rights in the context of climate change.

Several rulings in the European Court of Human Rights also acknowledge that the right to life enshrined under Article 2 of the ECHR is fundamentally linked to the right to a healthy environment and that “the obligation to protect the right to life may also include protection from environmental harm.”<sup>140</sup> It may also be within the remit of the European Court of Human Rights to interpret Article 3 of the ECHR – which prohibits inhuman or degrading treatment – as pertaining to extreme environmental disasters.<sup>141</sup> Protection under the ECHR focuses on potential harm to the applicant resulting from removal. Potential harm is contingent upon a reasonable consideration of the capacity of the state of origin or return to mitigate against causes of harm. However, due to the fact that the European Court of Human Rights has been inclined to accept a comparatively less rigid

standard of what constitutes an acceptable degree of mitigation (due to the difficulty predicting and controlling such events) – any appeal to climate change factors in isolation is unlikely to succeed.<sup>142</sup>

The growing phenomenon of mixed migration – which essentially refers to the fact that migration streams include both those who escape distress as well as those seeking betterment while also acknowledging that for some the motivation may be both<sup>143</sup> – may mean that legal frameworks governing the rights of migrant workers such as the 1990 Convention on Migrant Workers can afford limited protection to those displaced across borders who engage in remunerated work,<sup>144</sup> although it fails to account for the specific drivers of climate displacement.<sup>145</sup> Furthermore, the 1990 Convention has been ratified by just over 50 countries – most of which are countries of origin rather than destination – meaning that it offers very limited protective coverage to climate refugees.

The UN Human Rights Committee has released several rulings relating to the human rights impacts of the climate crisis. In particular, the decisions

have recognised how the climate crisis may affect multiple human rights enshrined within international customary and treaty-based law, including the right to life, which may apply to situations of climate-induced displacement.<sup>146,147</sup> Critically, the decision of the Committee in the *Teitiota v. New Zealand* case provided the first formal finding that it may be unlawful for governments to send people back to countries where the climate crisis exposes them to life-threatening risks or cruel, inhuman or degrading treatment, based on the right to life and the principle of non-refoulement.<sup>148</sup> However groundbreaking this reasoning may be, it still did not confer protection to Ioane Teitiota and his family, who were ordered deported back to Kiribati because the timescale of climate crisis risk was not judged to be imminent enough. In practice, this case demonstrates how most climate refugees would be unable to meet the requirements of the non-refoulement principle as currently interpreted by the Human Rights Committee. This ruling further highlights the need for new and specific legal frameworks to apply human rights protections and guarantees to climate refugees now.





# CONCLUSIONS

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The international legal framework as it stands is not fit for the humanitarian challenge of climate refugees. Given the historic injustice at the heart of the climate crisis, whereby those affected first and worst by climate breakdown are most often those with the least historical responsibility for greenhouse gas emissions, it is morally imperative and critically important to the achievement of the global Sustainable Development Goals (SDGs) that the international community urgently work together to protect climate refugees by:

- 1. MITIGATING GLOBAL HEATING THROUGH RAPID DECARBONISATION ACTION; AND**
- 2. DEVELOPING PROTECTIONS FOR THOSE ALREADY AFFECTED BY THE CLIMATE CRISIS.**

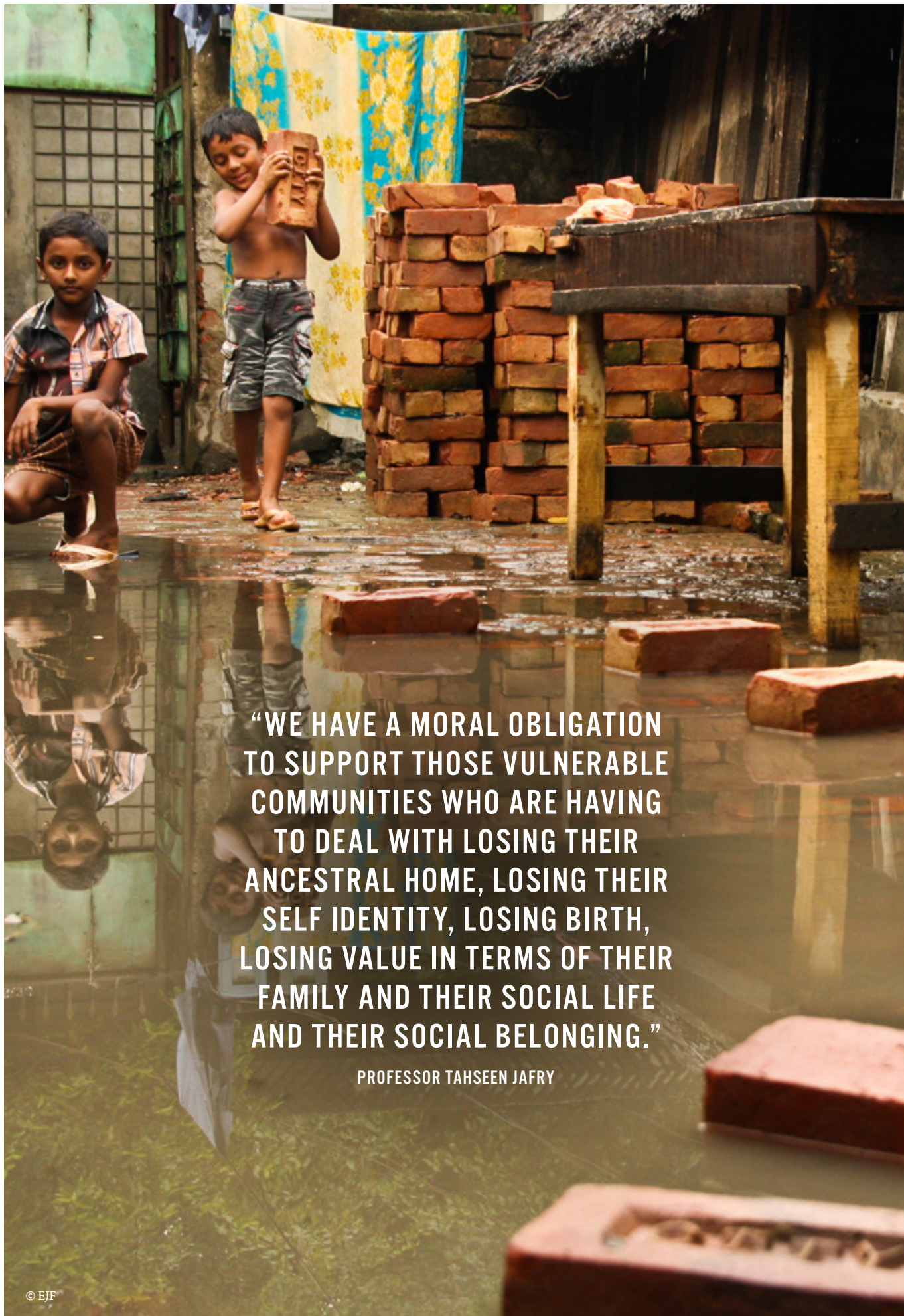
Although the concept of common but differentiated responsibilities has been codified in international climate law, it is still lacking in the response to climate displacement.<sup>149,150</sup> It is critical that any new framework for protecting climate refugees encompasses the full continuum of displacement experience, from acute, event-based displacement to more chronic push motivations, where climate-induced gradual degradation renders life increasingly difficult and thus forces communities to flee their homes.<sup>151</sup> For many climate refugees, leaving home is a last resort and many would prefer to stay if it were possible. Therefore all solutions must follow the framework laid out in the SDGs, including every effort to help people stay if they so desire, and provide support for those impacted by the climate crisis to make safe, dignified and empowered decisions for themselves and their families.

There is increasing consensus that new approaches are needed to meet the needs of climate and environmentally displaced people. A recent study found that both UN and EU policy documents in the past decade made increasing reference to climate change as a driver of displacement, but that perspectives differed: where the UN tended to focus on human

security, the EU tended to emphasise state security, although both actors highlighted support for climate adaptation as a response measure.<sup>152</sup> In 2017, the G20 recognised the complex link between the climate crisis and displacement, and that current international frameworks were not equipped to support the expected rise in climate refugees, and released a set of recommendations, including a call to governments and international organisations to “updat[e] the definitions of migrants and refugees to ensure that their rights and obligations, and the obligations of countries of origin, transit and destination reflect the coming realities and provide a helpful framework.”<sup>153</sup> Determining whether climate-related migration is forced or voluntary, or untangling global heating from a web of interrelated push factors for leaving home, may not be practicable in the vast majority of displacement cases, but this may not be the most relevant issue for the international community. The crux of the matter will be whether these displaced communities need international protection, and clearly defining the grounds on which this need can be codified into a legal right.<sup>154</sup> In light of COP 26, the first International Migration Review Forum, and the 2021 IPCC report about the imminent catastrophic impacts of climate breakdown, the time is now to move from debate to action, and deliver on protections for climate refugees.

*“A lot of the people that are having to move because of the climate [crisis] are from rural landscapes, rural areas, and some of the most poorest countries in the world that have done nothing to contribute to the global crisis that we are facing right here right now. We have a duty of care. We have a moral obligation to support those vulnerable communities who are having to deal with losing their ancestral home, losing the place that they live, losing their self identity, losing birth, losing value in terms of their family and their social life and their social belonging. We’ve benefited enormously in the West from industrialization... And there’s no doubt in my mind that we have a moral obligation to support and to give back where we can so that we are protecting humanity.” - Professor Tahseen Jafry*





**“WE HAVE A MORAL OBLIGATION TO SUPPORT THOSE VULNERABLE COMMUNITIES WHO ARE HAVING TO DEAL WITH LOSING THEIR ANCESTRAL HOME, LOSING THEIR SELF IDENTITY, LOSING BIRTH, LOSING VALUE IN TERMS OF THEIR FAMILY AND THEIR SOCIAL LIFE AND THEIR SOCIAL BELONGING.”**

**PROFESSOR TAHSEEN JAFRY**

# RECOMMENDATIONS

In light of the reality faced by vulnerable communities impacted first and worst by the climate crisis and ahead of COP 26 and the upcoming first International Migration Review Forum, EJF calls on governments to take bold, rights-centred action now to protect those displaced by the climate crisis.

## EJF RECOMMENDATIONS:

### → A NEW LEGAL FRAMEWORK FOR THE PROTECTION OF CLIMATE REFUGEES

The international community must work towards a new legal framework for the protection of climate refugees. UN member states must act now to agree on clear definitions for climate-induced migration which can be implemented in international and domestic law to ensure a rights-based approach and give clarity to the legal status of 'climate refugees'. A new international agreement must be developed which lays out the rights and protections due to those forcibly displaced by the climate crisis, and the duties and obligations of third parties and sovereign states to uphold those rights.

**Such action must take place entirely outside of the scope of the 1951 Convention Relating to the Status of Refugees, in order to guard the integrity of existing refugee protection mechanisms.**

### → IMPLEMENT THE PARIS AGREEMENT

All countries must implement the Paris Agreement and keep global temperature rise to 1.5°C above pre-industrial levels.

### → SCALE UP INTERNATIONAL CLIMATE FINANCE COMMITMENTS

Developed nations must deliver on and scale up international climate finance commitments, with the promised \$100 billion representing the floor and not the ceiling of ambition, to fund mitigation, adaptation, loss and damage, disaster risk reduction and resilience programmes which deliver dignified and durable solutions for those impacted first and worst by the climate crisis. For many climate refugees, leaving home is a last resort and solutions must provide every possible support along the framework of the SDGs.

### → DATA COLLECTION AND MONITORING FOR CLIMATE REFUGEE PROTECTIONS

All countries must invest in developing data collection and monitoring systems to better understand, predict and support the needs of climate refugees, including tracking slow-onset disasters and small-scale events.<sup>155</sup>

### → INCLUSIVE NEGOTIATING MECHANISMS

All stakeholders must be included in deliberations and negotiations, with special reference to local and Indigenous communities and the most vulnerable and disenfranchised, in order to guarantee that international protection mechanisms centre the needs and desires of climate refugees for safe, dignified and justice-based solutions.

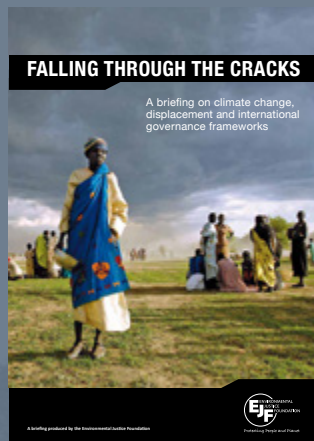
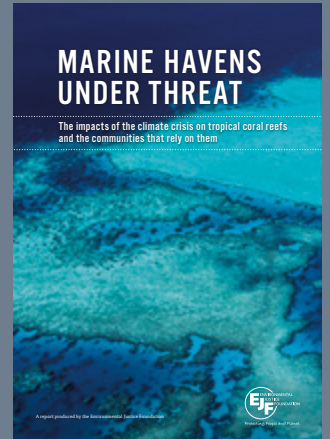
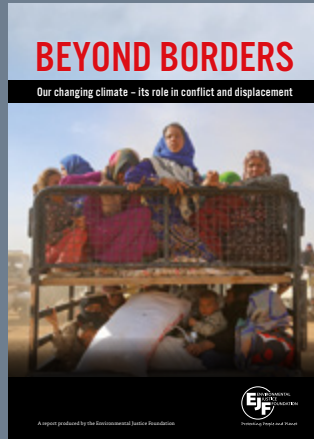


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